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**BARRY LAMAR BONDS**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Defendant respectfully submits the following in response to the Government's Opposition to Defendant's Motion to Seal.

1. The Defendant's Motion to Seal was filed in an abundance of caution. The defense has received thousands of pages of discovery from the Government, including Grand Jury transcripts, and Grand Jury exhibits. In some instances it is not possible to determine whether particular documents were originally obtained by the Government by a Grand Jury Subpoena, or a search warrant, or other means.

Especially in light of the rancorous history of the BALCO litigation, the defense did not

1 want its Motion in Limine to be greeted by a Government claim that Grand Jury secrecy had  
2 been violated, or the confidentiality of discovery materials had somehow been breached. Those  
3 concerns are now mooted because the Government has made it clear that there are no  
4 confidentiality limitations on materials supplied in discovery.

5 2. The Court in its discretion may wish to consider whether jury selection will be  
6 unduly burdened by immediate publication of laboratory “tests” and hearsay documents that may  
7 never come into evidence. Of course there will be a public trial at which all the testimony and  
8 other evidence will be freely accessible. That is not quite the same as endorsing publication,  
9 prior to jury selection, of inflammatory materials that the trial jury may never see.

10 3. What should be immediately unsealed, beyond any doubt, are all documents on  
11 file in this Court in the BALCO case. The pleas and sentencing in BALCO are years old, yet  
12 there are still sealed and redacted search warrants and sealed motions, among other things, in the  
13 Clerk’s Office. In light of the Government’s professed advocacy for “a presumed right of access  
14 to pretrial proceedings and documents,” (United States’ Opposition at page 2), the Government  
15 undoubtedly will join the defense in making sure that the entire BALCO record is finally open to  
16 public scrutiny.

17 This is a matter of consequence to the pending Motion in Limine. The Government’s  
18 letter of December 26, 2008, suggests that it will try to use BALCO documents and one of the  
19 BALCO principals to establish a foundation for evidence against Mr. Bonds. The Government  
20 has represented that its BALCO files have been made available to the defense in discovery.

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1 There is no conceivable reason, then, why BALCO documents on file with the Court should any  
2 longer be sealed or redacted.

3 Dated: January 20, 2009

Respectfully submitted,

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7 RIORDAN & HORGAN

8 By /s/Allen Ruby  
9 Allen Ruby

10 Counsel for Defendant  
11 Barry Lamar Bonds